Government Servants Conduct, Discipline and Appeal Rules:
Reinstatement in service of persons suspended, removed or dismissed from service —

GOVERNMENT OF MAHARASHTRA.

GENERAL ADMINISTRATION DEPARTMENT.

Circular No. CDR-1158-D.

Sachivalaya, Bombay, 15th December 1960. / Agrahayana 24, 1882.

CIRCULAR OF GOVERNMENT.

Government has had under consideration certain questions connected with the reinstatement of Government servants who are suspended, removed or dismissed from service, and especially how the period of absence during their suspension, removal or dismissal should, on their subsequent reinstatement, be regulated. Government is pleased to issue the following instructions in this connection:—

(*i*) The relevant provisions in this behalf are embodied in rule 152 of the Bombay Civil Services Rules. Under sub-rule (1) of the said rule when a Government servant who has been dismissed, removed or suspended *is reinstated*, the authority competent to order the reinstatement shall consider and make a specific order (*a*) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty and (*b*) whether or not the said period shall be treated as a period spent on duty. The subsequent sub-rules contain the principles on the basis of which the competent authority has to decide these questions. The opening words of sub-rule (1) make it clear that the rule applies only where a person is *reinstated*, for it is only then that the authority competent to order the reinstatement shall consider and make a specific order as mentioned in the said rule.

(*ii*) Accordingly, where a person who is placed under suspension pending departmental enquiry or prosecution, is reinstated in service on the completion of the departmental enquiry or upon acquittal by the Court, there is no difficulty regarding the treatment of the period of suspension. The competent authority ordering the reinstatement has to regulate the said period according to the provisions of rule 152 of the above mentioned rules.

(*iii*) In cases relating to removal or dismissal of a Government servant, it is necessary for the authority to record reasons for setting aside the order in question and passing a fresh order of reinstatement. The reason may be (*a*) that the order of removal or dismissal was based on insufficient evidence or defective reasoning or appreciation of evidence, or (*b*) that the same was passed by an authority subordinate to the appointing authority or was so passed without giving a reasonable opportunity to show cause, in violation of the constitutional provisions contained in article 311 of the Constitution. In the case mentioned in (*a*) the original order was passed in the exercise of undoubted jurisdiction and an error does not render it void *ab-initio*. If such an order has to be set aside and calls for an order of reinstatement, while passing such an order of reinstatement the competent authority would be entitled under rule 152 to regulate the period of absence in accordance with the provisions of that rule. The case mentioned at (*b*) above, i.e., where the order of removal or dismissal is in violation of Constitutional provisions, however, stands on an entirely different footing. The order in such a case is wholly void and inoperative so far as the Government servant punished is concerned, and so far as removal or dismissal is concerned it is inoperative, so that the Government servant still continues to be in service.

Consequently, there is no question of reinstatement within the meaning of rule 152 of the Bombay Civil Services Rules and the question of regulating the period of absence thereunder does not arise. The position would be precisely the same in this behalf whether the declaration is granted by a Court, or Government set aside an order in appeal on revision, on the ground that it was unconstitutional and, therefore, void *ab-initio*; for strictly speaking even when Government set aside an order of removal or dismissal in such a case, there is no reinstatement but a mere declaration that the order was inoperative and the servant continued in employment. Where, therefore, the order of removal or dismissal was in violation of the constitutional provisions referred to above, the provisions of rule 152 of the Bombay Civil Services Rules cannot be pressed into service for the regulation of the period of absence of the Government servant concerned from the date of his removal or dismissal to the date of his reinstatement, and the period in question will have to be treated as duty. The Government servant concerned will be entitled to arrears of pay for this period subject to the law of limitation.

(*iv*) What is stated in (*iii*) above would equally cover the regulation of the period of suspension of a Government servant prior to his removal or dismissal. The suspension order merges into the order of punishment when the latter is passed and does not revive if the order of punishment is subsequently held to be in contravention of the constitutional provisions. Even though the suspension order passed in such a case might be a valid one, there being no question of reinstatement involved, the subsequent removal or dismissal order having been held to be in violation of article 311 and therefore inoperative, the provisions of rule 152 will not be attracted in this case either, and the Government servant concerned will be entitled to full pay even for the period of his suspension, subject to the law of limitation. The fact that the Government servant who, on the defective order being set aside, has been reinstated, again suspended and proceeded against departmentally, would not affect this position.

By order and in the name of the Governor of Maharashtra,

K. P. NADKARNI,
Under Secretary to the Government of Maharashtra,
General Administration Department.

G. C., No. CDR-1158-D, G. A. D., dated the 15th December 1960/ Agrahayana 24, 1882.

To

The Secretary to the Governor,
The Private Secretary to the Chief Minister,
The Accountant General, Maharashtra, Bombay
The Deputy Accountant General, Nagpur
The Pay and Accounts Officer, Bombay } (through the Finance Department),
The Resident Audit Officer, Bombay,
The Prothonotary and Senior Master, High Court, Bombay (by letter),
The Registrar, High Court, Appellate Side, Bombay (by letter),
All other Heads of Departments and Heads of Offices under the several Departments of the Secretariat,
The Finance Department,
All other Departments of the Secretariat.